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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,319	09/11/2003	Stephen Baldwin	19185 (27839-1293)	5393
45736 7590 08/13/2009 Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102				
EXAMINER ANDERSON, CATHARINE L				
ART UNIT 3761		PAPER NUMBER		
NOTIFICATION DATE 08/13/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

Office Action Summary

Application No.

10/660,319

Applicant(s)

BALDWIN ET AL.

Examiner

Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 June 2009 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-36 and 41 have been considered but are moot in view of the new ground(s) of rejection.

Terminal Disclaimer

3. The terminal disclaimer filed on 8 June 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of prior patent No. 7,547,443 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-36 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatto et al. (6,570,054) in view of Ehmsperger et al. (6,160,200).
6. With respect to claim 1, Gatto discloses all aspects of the claimed invention with the exception of the claimed rheology enhancer. Gatto discloses an absorbent article, as shown in figure 1, comprising a liner having a lotion formulation deposited on the body-facing surface, as disclosed in column 5, lines 1-11, in an amount from about 0.05 to 100 mg/cm², as disclosed in column 33, lines 13-16. The lotion formulation comprises from 10-89% of an emollient (column 18, lines 65-67), from 10-50% of a structurant (column 22, lines 57-61), and from 0.1-40% of a rheology enhancer (column 11, lines 25-28).
7. Gatto discloses in column 15, line 65, that the rheology enhancer comprises cellulose derivatives. Ehmsperger teaches the functional equivalence of cellulose derivatives and styrene/isoprene/styrene copolymers for use in a formulation applied to a diaper, as disclosed in column 16, lines 1-5.
8. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the formulation of Gatto with styrene/isoprene/styrene copolymers, since substitution of one known, equivalent element for another is obvious, and Ehmsperger teaches the functional equivalence of styrene/isoprene/styrene copolymers and cellulose derivatives.
9. With respect to claims 2 and 3, the emollient is present in an amount of 60-80%, as disclosed in column 18, lines 65-67.

10. With respect to claim 4, the structurant is present in an amount of 20-40%, as disclosed in column 22, lines 57-60.
11. With respect to claims 5 and 6, the rheology enhancer is present in an amount of 1-25%, as disclosed in column 11, lines 25-28.
12. With respect to claim 13, the lotion formulation further comprises antibacterial and antiviral actives, as disclosed in column 24, lines 59-67.
13. With respect to claim 14, the emollient comprises polysiloxanes, fatty alcohols, fatty acids, or lanolin, as disclosed in column 16, lines 35-61.
14. With respect to claim 15, the structurant has a melting point of about 45°-85° C, as disclosed in column 19, lines 42-45.
15. With respect to claim 16, the structurant comprises waxes, as disclosed in column 22, lines 38-43.
16. With respect to claims 17 and 18, the lotion formulation is present in the amount of 10-40 mg/cm², as disclosed in column 33, lines 13-16.
17. With respect to claim 41, the rheology enhancer further comprises butylenes/ethylene/styrene copolymers, as disclosed in column 15, lines 64-65.
18. With respect to claims 7-12 and 19-36, Gatto discloses the lotion formulation of the claimed invention, comprising the identical components in the identical amounts. Therefore, the lotion composition of Gatto will exhibit the identical physical properties of the instant invention, and inherently have a melt point viscosity and a temperature viscosity of 100,000-500,000 cPs and 100-5,000 cPs, respectively. The lotion composition of Gatto will also inherently exhibit a penetration hardness of about 60-120.

19. In the alternative, Gatto discloses a desired apparent viscosity of 1-100,000 cPs, as disclosed in column 8, lines 53-58. Gatto further discloses in column 40, Table 7, a desired Yield Stress of 10-80. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the lotion composition of Gatto with melt point and temperature viscosities of 100,000-500,000 cPs and 100-5,000 cPs, respectively, and a penetration hardness of about 60-120, since it has been held that where the general conditions of the claim (i.e. a viscous yet stable lotion) are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761